

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Joint Stipulation and Settlement Agreement (hereinafter the “Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”) is made between Plaintiff Eric Mendez (hereinafter “Plaintiff” or “Class Representative”) on behalf of himself and the Class, on the one hand, and Defendant M&N Consulting, Inc., dba A-Line Messenger Service (hereinafter “Defendant” or “A-Line”), on the other hand (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This Agreement is intended to settle the case entitled *Eric Mendez v. M&N Consulting, Inc., dba A-Line Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624) (hereinafter the “Action”).

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$15,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual Administration Costs are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 35% of the Gross Settlement Amount. 35% of the Gross Settlement Amount is \$328,111. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
3. **Class**: All individuals who worked for Defendant in California as a non-exempt hourly driver employee at any time between August 12, 2015 through October 13, 2021.
4. **Class Counsel**: David Mara and Matthew Crawford of Mara Law Firm, PC.
5. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) last know telephone number; (4) last known email address; (5) social security number; (6) hire and, if applicable, termination dates; (7) the total number of weeks during which the Class Member performed actual work during the Class Period; and (8) the total

number of pay periods during which the PAGA Aggrieved Employees worked during the PAGA Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.

6. **Class Member**: Each person who is a member of the Class.
7. **Class Notices**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
8. **Class Period**: August 12, 2015 through October 13, 2021.
9. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed \$10,000. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for an Individual Settlement Share. This payment is also offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
10. **Cost Award**: The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed \$35,000. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
11. **Counsel for Defendant**: Kyle D. Kring and Kerri N. Kramer of Kring & Chung, LLP.
12. **Court**: Superior Court of California for the County of San Bernardino.
13. **Effective Final Settlement Date**: The effective date of this Settlement will be when the final approval of the Settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the Court grants final approval of the Settlement, the date the Court enters judgment granting final approval of the Settlement.
14. **Employer Taxes**: Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state,

and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.

15. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
16. **First Installment:** The First Installment shall be comprised of one-third of the Gross Settlement Amount, \$312,487, plus the applicable Employer Taxes.
17. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$937,460. This is the maximum gross amount Defendant can be required to pay under this Settlement Agreement, with the only exceptions being its obligation to pay Employer Taxes and any additional amount due pursuant to the Workweek Escalation Clause. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award; (3) the Class Representative Enhancement Payment ; (4) the Administration Costs; and (5) the PAGA Payment. The Employer Taxes will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
18. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
19. **LWDA:** California Labor and Workforce Development Agency.
20. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the Individual Settlement Shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share for the portion of the Individual Settlement Shares allocated as wages.
21. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
22. **PAGA Aggrieved Employees:** Class Members who worked during the PAGA Period.

23. **PAGA Payment:** The Parties agree to settle the PAGA claims for \$50,000. 75% of this amount shall be paid to the LWDA. The remaining 25% of this amount shall be added to the PAGA Fund for distribution to PAGA Aggrieved Employees.
24. **PAGA Period:** May 29, 2018 through October 13, 2021.
25. **PAGA Released Claims:** The Released Claims applicable to Plaintiff, all PAGA Aggrieved Employees, and the State of California shall mean: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, and damages based on any and all PAGA claims seeking civil penalties that are alleged or could have been alleged based upon a reasonable interpretation of the facts alleged in the operative complaint and notice to the LWDA. This release will be for the PAGA Period.
26. **Opt-Out or Request for Exclusion:** Means a Class Member who requests to be excluded from, or opt-out of, the Settlement on or before the Response Deadline. Individuals who request to be excluded from, or opt-out of, the Settlement shall not receive an Individual Settlement Share and will not release any of the Released Claims against the Released Parties herein. If the Class Member who requests to be excluded from the Settlement is also a PAGA Aggrieved Employee, they will still receive their Individual PAGA Settlement Share and will still release the PAGA Released Claims.
27. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
28. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the Class Settlement.
29. **Released Claims:** The Released Claims applicable to Plaintiff and all Participating Class Members shall mean: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, and damages arising from the claims certified pursuant to the class certification order issued by the Court on October 13, 2021. This release will be for the Class Period.
30. **Released Parties:** Defendant and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.
31. **Response Deadline:** Thirty (30) calendar days from the initial mailing of the Class Notices.

32. **Second Installment:** The Second Installment shall be comprised of one-third of the Gross Settlement Amount, \$312,487, plus the applicable Employer Taxes.
33. **Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members to all former employee Class Members at the address resulting from the skip trace. The Settlement Administrator will also email the Class Notices to all Class Members at the email address Defendant has on file for those Class Members. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
34. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions.
35. **Third Installment:** The Third Installment shall be comprised of one-third of the Gross Settlement Amount, \$312,487, plus the remaining Employer Taxes.
36. **Workweek(s):** a week in which a Class Member works one or more days during the Class Period.
37. **Workweek Escalation Clause:** If there is a 10% increase in the number of Workweeks or pay periods from the data that was reported at the time of mediation, the Gross Settlement Amount will increase by 1% for every 1% increase in Workweeks or pay periods over the 10% threshold. The reported Workweeks are 9,868 at \$95 per workweek.

II. **RECITALS**

38. On May 29, 2019, Plaintiff uploaded a notice to the LWDA in accordance with the PAGA. Plaintiff's notice alleges that Defendant failed to pay all straight time and overtime wages, failed to provide lawful meal and rest periods, failed to provide accurate itemized wage statements, failed to pay all wages due at the termination of employment, failed to pay wages twice per month, failed to provide paid sick days, and failed to reimburse business expenses.
39. A complaint against Defendant was filed by Plaintiff in the Court on August 12, 2019 (Case No. CIVDS1923624). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4)

failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages owed at termination; (7) violation of the Labor Code Private Attorneys General Act of 2004; (8) failure to reimburse / illegal deductions; and (9) violation of Unfair Competition Law.

40. On October 13, 2021, the Court granted Plaintiff's motion for class certification and certified Plaintiff's claims for: (1) on-duty/on-call meal periods; (2) failure to maintain records of meal periods; (3) unlawful rest periods; (4) unpaid wages; (5) unlawful wage statements; (6) waiting time penalties; (7) reimbursement for expenses incurred for the use of personal vehicles; and (8) derivative claims, including under the Unfair Competition Law.
41. On April 13, 2023, the Parties participated in a full-day mediation with respected wage and hour mediator, Mark Rudy, as a result of which the Parties were ultimately able to reach an agreement on settlement that is reflected in this Agreement.
42. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
43. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims and the PAGA Released Claims.
44. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission,

concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether the class or classes should remain certified, other than for settlement purposes only.

- 45. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- 46. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, Defendant will pay the Gross Settlement Amount.
- 47. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member and an Individual PAGA Settlement Share from the PAGA Fund to each PAGA Aggrieved Employee.

A. Calculation.

- i. **Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks they worked for Defendant in California as a Class Member based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of relevant weeks that they worked.
- ii. **Individual PAGA Settlement Share Calculation.** Each PAGA Aggrieved Employee will receive a proportionate share of the PAGA Fund that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of the PAGA Payment), equal to (i) the estimated number of pay periods they worked

at least one (1) day of the week for Defendant in California during the PAGA Period based on the Class Data provided by Defendant, divided by (ii) the total estimated number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period based on the same Class Data, which is then multiplied by the PAGA Fund.

B. Tax Withholdings. Each Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% interest and penalties. Each PAGA Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be from each Class Member's Individual Settlement Share.

C. Tax Treatment and Payment. The Parties agree that Plaintiff and the Participating Class Members and/or PAGA Aggrieved Employees who receive any payment pursuant to this Settlement shall be solely responsible for any and all individual tax obligations associated with this Settlement and shall hold Defendant and the Released Parties harmless from any and all liability with regard thereto.

48. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed herein to the following:

A. To the Named Plaintiff: In addition to his Individual Settlement Share, the Settlement Administrator will pay the Class Representative Enhancement Payment to Plaintiff out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

B. To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for the Attorneys Fee Award and Cost Award. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award to Class Counsel out of the Gross Settlement Amount. The Settlement Administrator may, at the request of Class Counsel, purchase an annuity to utilize U.S. treasuries and bonds or other attorneys fee deferral vehicles for Class Counsel. Payroll tax withholding

and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award.

- C. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and the Employer Taxes will forward the same to the appropriate taxing authorities.
 - D. To the Settlement Administrator.** The Settlement Administrator will pay to itself the Administration Costs.
 - E. To the LWDA.** The Settlement Administrator will pay \$37,500 of the PAGA Payment to the LWDA.
 - F. To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Gross Settlement Amount.
 - G. To the PAGA Aggrieved Employees.** The Settlement Administrator will pay PAGA Aggrieved Employees according to the Individual PAGA Settlement Share calculations set forth above. All payments to PAGA Aggrieved Employees shall be made from the Gross Settlement Amount.
- 49. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, mailing, and emailing the Class Notice to Class Members; performing skip traces and re-mailing notices to Class Members; calling Class Members with undeliverable notices to attempt to obtain accurate addresses; keeping track of any objections or Requests for Exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share and each PAGA Aggrieved Employee's Individual PAGA Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or Requests for Exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and, if necessary, re-mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the appropriate portion of the PAGA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members and

Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State of California unclaimed property fund in the name of the Class Member; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

50. Procedure for Approving Settlement.

A. Motion for Preliminary Approval and Conditional Certification.

- i.** Plaintiff will move for an order: (1) granting Preliminary Approval of the Settlement; (2) setting a date for the Final Approval hearing; and (3) approving the Class Notice.
- ii.** At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- iii.** At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting Preliminary Approval of the Settlement; appointing the Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. Effect of Denial of Preliminary Approval.** Should the Court decline to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested

Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

B. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- i. Delivery of Class Data.** Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential.
- ii. Preparation of Class Notices.** Based on the information in the Class Data and the formula set forth herein, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share for every Class Member, to be included in the individualized Class Notices to be sent to that Class Member, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members. The Class Notices will inform each Class Member of their right to do nothing, dispute the number of Workweeks worked, Opt Out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.
- iii. Mailing of Class Notices.** Within fourteen (14) calendar days after receipt of the Class Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.
- iv. Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement

Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

- v. **Undeliverable Notices.** If the Settlement Administrator is unable to locate a better address through a database search or skip trace, the Settlement Administrator shall call the last known phone number provided by Defendant to attempt to obtain an accurate address. If an address is obtained, the Settlement Administrator shall promptly re-mail the Class Notice to the updated address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each remaining.
- vi. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.
- vii. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

C. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

- a. Format.** Any Objections shall state: (a) the objecting person’s full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

D. Request for Exclusion from the Settlement (“Opt-Out”). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and either the last four digits of the Class Member’s social security number or the Class Member’s full employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or their lawful representative; and (e) be postmarked no later than the Response Deadline. A request to Opt-Out of the Settlement shall not serve to exclude the Class Member who is also a PAGA Aggrieved Employee from participation in the settlement of PAGA claims under this Settlement. PAGA Aggrieved Employees who opt-out from the class portion of the settlement shall still be entitled to their share of the PAGA Fund. Subject to Court approval of the PAGA Payment, PAGA Aggrieved Employees shall have no right or ability to opt out of the PAGA portion of this Settlement, including their release of the PAGA Released Claims.

- i. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the class portions of the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by

the Court, and by the subsequent judgment, regardless of whether they have objected to the Settlement.

- ii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid Requests for Exclusion, and the number of Class Members who returned invalid Requests for Exclusion.

E. Class Member Disputes. If a Class Member wishes to dispute the number of Workweeks listed on their Class Notice, the Class Member must notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce copies of any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member contends they worked for Defendant during the Class Period. The Settlement Administrator shall then provide the documentation provided by the Class Member to Defendant. Defendant shall review its records, the documentation provided by the Class Member, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

F. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

G. Motion for Final Approval.

- i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for

an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members.

ii. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs actually incurred through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, and/or Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

iii. Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

H. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

I. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further

obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount (other than as a result of reduce amounts awarded for the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, and/or Administration Costs), and any change to the calculation of the Individual Settlement Share.

J. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. Funding the Settlement:** Defendant shall fund and deliver to the Settlement Administrator the First Installment no later than sixty (60) calendar days of the Effective Final Settlement Date.

Defendant shall fund and deliver to the Settlement Administrator the Second Installment no later than six (6) months after the funding of the First Installment.

Defendant shall fund and deliver to the Settlement Administrator the Third Installment no later than four (4) months after the funding of the Second Installment.

- ii. Disbursement of the Settlement:** Within ten (10) calendar days after receiving the First Installment, the Settlement Administrator shall disburse: (1) one-third of the Net Settlement Amount to Participating Class Members; (2) one-third of the Attorneys Fee Award and Cost Award to Class Counsel; (3) one-third of the Class Representative Enhancement Payment to the Class Representative; (4) one-third of the Administration Costs to itself; and (5) one-third of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

Within ten (10) calendar days after receiving the Second Installment, the Settlement Administrator shall disburse: (1) one-third of the Net Settlement Amount to Participating Class Members; (2) one-third of the Attorneys Fee Award and Cost Award to Class Counsel; (3) one-third of the Class Representative

Enhancement Payment to the Class Representative; (4) one-third of the Administration Costs to itself; and (5) one-third of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

Within ten (10) calendar days after receiving the Third Installment, the Settlement Administrator shall disburse: (1) the remainder of the Net Settlement Amount to Participating Class Members; (2) the remainder of the Attorneys Fee Award and Cost Award to Class Counsel; (3) the remainder of the Class Representative Enhancement Payment to the Class Representative; (4) the remainder of the Administration Costs to itself; and (5) the remainder of the PAGA Payment to the LWDA and PAGA Aggrieved Employees.

- iii. **Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

K. Settlement Administrator’s Final Report. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

L. Uncashed Checks. Participating Class Members and PAGA Aggrieved Employees must cash or deposit their disbursement checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

- i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
- ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds

associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall escheat to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member.

M. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

- 51. Release of Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid Request for Exclusion release the Released Parties from the Released Claims and PAGA Aggrieved Employees release the Release Parties from the PAGA Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.
- 52. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment, Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law.

- 53. Institutional Changes.** As part of the Parties' settlement, Defendant has agreed to make institutional changes.

A. Policy Changes. Defendant shall implement the following policy changes no later than fifteen (15) calendar days of the Effective Final Settlement Date.

- i. Defendant will change its compensation plan so that non-exempt hourly driver employees are compensated from the first time they call in to receive a dispatch at the beginning of their shift until the completion of the last assignment of that day except for an unpaid timely 30 minute meal that should be made available. This includes a payment for mileage and the driver's currently hourly rate.
- ii. Defendant shall implement and distribute to its employees a written rest period policy that complies with California law.
- iii. Defendant shall comply with its record keeping obligation under Labor Code §1174.

B. No Admission of Liability. The Parties agree that Defendant's commitment to make institutional and policy changes pursuant to this agreement is made solely as a part of the Parties' negotiated compromise of the underlying Action. Nothing in this section shall be construed or deemed to be an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties, nor does Defendant concede that any policies are or were unlawful or otherwise non-compliant.

54. Miscellaneous Terms

A. No Admission of Liability. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should remain certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

B. Confidentiality Prior to Preliminary Approval. The Parties agree that, until the motion for Preliminary Approval of this Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause

or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) in response to a court order or subpoena; or (3) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking such information. The Parties agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect.

- C. Non-Publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, its terms or contents, or the negotiations underlying the same, in any manner or form, directly or indirectly, to any person or entity, except as otherwise required by law, ordered by the Court, or contractually necessary to effectuate the terms of the Settlement as set forth herein.
- D. No Effect on Employee Benefits.** No amount paid under this Agreement shall be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, the Participating Class Members, and the PAGA Aggrieved Employees. The Parties agree that any amounts paid under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' or PAGA Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- E. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- F. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by

Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- G. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- H. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- I. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- J. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- K. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- L. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.


- M. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- N. No Tax or Legal Advice.** The Parties understand and agree that the Parties and their respective counsel are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- O. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- P. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- Q. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- R. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 7/27/2023

ERIC MENDEZ

DocuSigned by:

E09B9E8DB45E430...

Dated: 08/08/23

M&N CONSULTING, INC.



Name: **Noah J Anderson**
Title: **CIO**

Dated: July 27, 2023

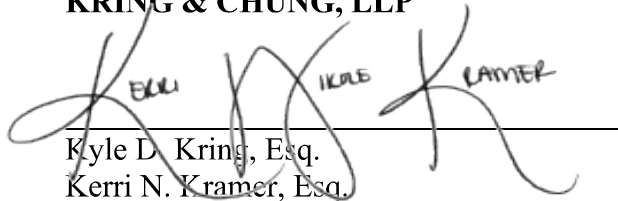
MARA LAW FIRM, PC



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff and Class Members

Dated: 8/8/2023

KRING & CHUNG, LLP


Kring Kramer

Kyle D. Kring, Esq.
Kerri N. Kramer, Esq.
Attorneys for Defendant